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AT

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 645

Case No. 705: FUSSIMANYA-REYNA Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, Vice-President, presiding; Mr. Luis de Posadas Montero, Vice-President; Mr. Mayer Gabay;

Whereas at the request of Montserrat Fussimanya-Reyna, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, successively extended until 15 February, 15 May and 15 July 1992 the time-limit for the filing of an application to the Tribunal;

Whereas, on 15 July 1992, the Applicant filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 4 November 1992, the Applicant, after making the necessary corrections, again filed an application, in which she requested the Tribunal, inter alia:

"...

To rescind the Secretary-General's decision of 6 September 1991

- Ordering that [the Applicant's] case be remanded to the Joint Committee for Classification of General Service Posts for a review as to whether changes in her functions have occurred since the initial classification of her post that would warrant its reclassification, and

- Granting [the Applicant] compensation equivalent to one month's net salary at her present grade and step.

...

- To declare that her post should be classified at the G-5 level retroactive to 2 July 1982;

- To declare that [the Applicant] has been discriminated against since 3 March 1980 in respect of her job description and post classification, as well as her working conditions;

- To award [the Applicant] compensation equivalent to the retroactive classification of her post at the G-5 level...

- To award [the Applicant] compensation in an amount equivalent to at least one month's salary per year, as from 3 March 1980, in acknowledgement of and as reparation for the mental anguish she has suffered;

- To award her a sum of US$ 5,000, as costs.

..."

Whereas the Respondent filed his answer on 19 May 1993;

Whereas the Applicant filed written observations on 5 November 1993;

Whereas, on 5 July 1994, the Applicant submitted additional documents;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 3 May 1970. She was offered a probationary appointment as a Spanish Typist at the G-2, step 1 level at the UN Office in Geneva (UNOG). On 1 May 1973, the Applicant was transferred to the International Narcotics Control Board and given a permanent appointment. She was promoted to the G-3 level, with effect from 1 August 1972, as a Shorthand-Typist and to the G-4 level, with effect from 1 July 1975. On 3 March 1980, the Applicant was transferred to the General Services Division, Building and

Engineering Branch. The Applicant's functional title was changed to Administrative Secretary, with effect from 1 April 1982.

In connection with the reclassification of General Service posts at UNOG, mandated by the General Assembly in May 1980, the Applicant was given a copy of her job description. In a memorandum dated 8 January 1981, the Chief of the Engineering Unit recommended to the Chief of the Building and Engineering Branch that the Applicant be promoted to the G-5 level.

On 2 July 1982, a Classification Officer interviewed the Applicant in the presence of the Chief of the Engineering Unit, to discuss her functions. In a letter dated 30 July 1982, the Applicant informed the Classification Officer that some elements were missing from her job description.

On 16 February 1983, the Chief of General Services advised the Applicant that her post had been classified at the G-4 level. On 6 May 1983, the Applicant requested the Joint Committed for Classification of General Service posts (Joint Classification Committee) to review the decision.

On 27 November 1984, the Secretary of the Joint Classification Committee informed the Applicant that, after considering the new information submitted, the Joint Classification Committee had decided to maintain the classification of her post at the G-4 level.

On 27 November 1984, the Applicant filed a complaint with the Panel on Discrimination and Other Grievances (the Panel on Discrimination) alleging that she had been discriminated by acts of hostility and verbal aggression; non-recognition of the level of responsibilities inherent in her work and refusal to recommend her for promotion.

On 7 June 1985, the Coordinator of the Panel on Discrimination submitted the Panel's report to the Director-General of UNOG and recommended that the Applicant's post be reclassified.

On 21 June 1985, the Director-General informed the Coordinator of the Panel on Discrimination that he had decided to

refer to the Personnel Service the question of the reclassification of the Applicant's post.

In a confidential memorandum dated 19 November 1986, the Chief of Engineering Unit indicated to the Chief of Personnel that although certain changes had occurred in the Applicant's functions, these did not warrant a change in the classification of the level of her post.

On 18 December 1987, the Chief of Personnel Administration Section informed the Applicant that the Joint Classification Committee had decided to maintain its decision to classify her post at the G-4 level.

On 20 January 1988, the Applicant requested the Secretary-General to review this decision. In a reply dated 19 February 1988, the Assistant Secretary-General for Human Resources Management informed the Applicant that the Secretary-General had decided to maintain the decision.

On 9 March 1988, the Applicant lodged an appeal against that decision with the Geneva Joint Appeals Board (JAB).

On 20 May 1988, the Chief of Personnel Service wrote to the Co-Chairmen of the Joint Classification Committee, requesting them to review the Applicant's job description in light of the changes which had taken place in her functions since the last classification exercise. On the same date, the Chief, Personnel Administration Section, wrote to the Chief of General Services, asking him to prepare an updated job description of the Applicant's post for evaluation by the Joint Classification Committee.

In a confidential memorandum dated 30 May 1988, the Chief of the Engineering Unit, who was the Applicant's supervisor, transmitted to the Classification Officer a modified job description for the Applicant's post. He reconfirmed his earlier assessment that the changes in the Applicant's functions were minor and did not warrant a reclassification of her post.

In a letter dated 6 December 1988, to the Chief of Personnel Service, the Co-Chairmen of the Joint Classification Committee

concluded that the changes in the Applicant's functions did not justify a modification in the level of the post.

On 2 September 1988, the Applicant filed a detailed statement of appeal with the Joint Appeals Board (JAB). The Board adopted its report on 28 August 1991. Its conclusions and recommendations read as follows:

> "Conclusions and Recommendations
>
> 63. ...the Panel concludes that the Appellant did not receive fair and proper treatment from her supervisors in respect of her job description and consequently her post classification.
>
> 64. The Panel also concludes that the Appellant's claim that certain aspects of her functions were not sufficiently treated and that some elements, which were missing from her job description, had not been taken into consideration by the Classification Committee appears well-founded.
>
> 65. Accordingly, the Panel recommends that the Appellant's case of reclassification of her post be remanded to the Classification Committee for an objective and complete evaluation of her functions in accordance with pertinent rules and procedures regulating the classification process. In this connection, the Panel urges the Appellant to fully co-operate in this exercise.
>
> 66. The Panel also recommends that the Appellant be awarded a compensation in an amount equivalent to one month of her net salary at her present grade and step, for the mishandling of her job description, the regrettable delay in the consideration of this case and the mental anguish she suffered therefrom.
>
> 67. The Panel makes no further recommendation in support of the appeal."

On 6 September 1991, the Acting Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the JAB report and informed her as follows:

> "The Secretary-General has re-examined your case in the light of the Board's report. He wishes first to reaffirm the validity of the initial classification of your post, your recourse against the classification decision having been rejected in 1984 by the Joint Classification Committee.

In the light of the Board's recommendation in paragraph 65 of the report and bearing in mind that, in the reclassification review undertaken in 1988 at the request of the Chief, Personnel Service, the Joint Classification Committee considered:

(i) a confidential memorandum from your supervisor which was not shown to you, and

(ii) a revised job description prepared by your supervisor which you had refused to sign, without consideration having apparently been given to your views concerning the changes in functions, the Secretary-General has decided that the question of the reclassification of your post be remanded to the Joint Classification Committee for a full and fair review as to whether changes in functions which occurred after the initial classification of your post would warrant a reclassification.

With regard to the Board's recommendation in paragraph 66 of the report, although the Secretary-General does not fully share the rationale of the Board's recommendation, he has decided, considering the entire circumstances of the case, to grant you compensation in an amount equivalent to one month's net salary at your present grade and step...".

On 4 November 1992, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contention is:

The Applicant has been the victim of discrimination since 3 March 1980, with respect to her job description and post classification, as well as her working conditions.

Whereas the Respondent's principal contentions are:

1. Any attempt by the Applicant to challenge the initial classification of her post is time-barred.

2. It is not the function of the Tribunal to substitute its judgement for that of the Secretary-General in job classification matters.

3. The Applicant has been adequately compensated for any irregularity which may have occurred in the handling of her case.

The Tribunal, having deliberated from 23 June to 14 July 1994, now pronounces the following judgement:

I. The Tribunal must first deal with the Respondent's contention that the Applicant's challenge to the initial classification of her post is time-barred.

II. It is not in dispute and it appears clearly from the record that since July 1982, through various United Nations administrative venues, the Applicant has never ceased in her attempt to obtain the reclassification of her post at the G-5 level. Nevertheless, a distinction has to be made between the period preceding October 1987 and thereafter.

III. The Respondent submits that with respect to the initial classification of her post, the Applicant failed to respect staff rule 111.2(a) and therefore her claim is time-barred. On 16 February 1983, the Chief of Personnel Administration Section informed the Applicant that the classification of her post remained at the G-4 level. It was only in May 1983, that the Applicant contested that decision. Therefore, when she filed her appeal at this time, the Applicant was not within the two months time-limit set forth in staff rule 111.2(a). The Applicant, instead of seeking a formal review of the decision to classify her post at the G-4 level, chose to file a complaint with the Panel on Discrimination. It may have been more expedient and efficient for the Applicant to choose this alternative since the decision not to reclassify her post at the G-5 level was inextricably bound to her allegations of discrimination and harassment by her superiors. However, the Panel on Discrimination is not the proper forum for reclassification matters.

IV. Accordingly, the Tribunal concludes that the application is time-barred with respect to the period preceding October 1987, the

time when the classification of the Applicant's post was reconsidered by the Joint Classification Committee.

V. On 18 December 1987, the Chief of Personnel Administration Section informed the Applicant that the Joint Classification Committee had decided to maintain its decision to classify her post at the G-4 level. On 20 January 1988, the Applicant wrote to the Secretary-General requesting a review of this decision. Accordingly, the Applicant acted within the two months time-limit provided in staff rule 111.2(a). Her application concerning this decision is not time-barred.

VI. On the substantive issue, the Tribunal recalls its jurisprudence in Waldegrave that:

> "It is not the function of the Tribunal to substitute its judgement for that of the Secretary-General in job classification matters. This would be so even if the Tribunal had the required expertise in this area - which it does not. For the most part, the arguments advanced on behalf of the Applicant seek to have the Tribunal determine independently how it would classify the post in question, but this is not the role of the Tribunal. It is instead the function of the Tribunal to determine whether under all the circumstances, the Respondent has acted within his reasonable discretion...". (Judgements No. 396, Waldegrave (1987), and No. 409, Trenner (1988)).

The Tribunal now turns its attention to the issue before it, namely whether the Respondent acted within his reasonable discretion when he classified the Applicant's post at the G-4 level.

VII. The Applicant alleges that, at her first meeting with her supervisor, the Chief of the Engineering Unit, she was informed of his belief that her post would be classified at the G-5 level as it entailed various administrative functions. This allegation has not been disputed. In a memorandum dated 8 January 1981, addressed to the Chief of the Building and Engineering Branch, the Chief of the

Engineering Unit strongly recommended that the Applicant be promoted to the G-5 level. The Applicant's supervisor later changed her job description, without her consent or adequate prior consultation with her.

VIII. The Tribunal notes that while the case was pending before the JAB, on 30 May 1988, the Chief of the Engineering Unit, without consulting the Applicant, sent a modified job description of her post to the Joint Classification Committee. He added that the change which had taken place in her functions did not warrant a change in the classification of the post. Moreover, he also referred to the Applicant's professional conduct. The failure to consult the Applicant, as well as the consideration of her conduct, which introduced an extraneous factor in the classification process, constituted irregularities. The Chief of the Engineering Unit may have indeed succeeded in influencing the Co-Chairmen of the Joint Classification Committee by this memorandum which they had before it when they reached their decision, in particular, as during the earlier deliberations of the Joint Classification Committee, the Applicant's post fell short of the G-5 level classification by a little over one point. In other words, her post fulfilled 98.44% of the requirements for this classification.

IX. The evaluation of a post for the purpose of classification must be conducted on the basis of objective criteria. This principle has been underscored by the Administrative Tribunal in Judgement No. 388, Moser (1987) where it held:

> "The classification of each post depends on the nature of the duties and responsibilities assigned to it and not on the personal qualifications, experience or performance of the incumbent. Therefore, posts should be classified according to their respective job descriptions, which must be presumed to set forth accurately the nature of the duties and responsibilities of the job. Classification refers to the task to be performed by the incumbent of a given post; promotion is, in principle, connected to the way that task

is performed, and takes into consideration performance evaluation reports."

As classification of a post is based on the job description, the Joint Classification Committee, in order to properly classify the Applicant's post, should have ensured that the job description was complete and included all her duties and responsibilities. It appears that the Committee failed to do so.

X. Based on the above considerations, the Tribunal finds that the Applicant's case should be remanded to the Respondent. He should arrange for the classification of the Applicant's post by the Joint Classification Committee, on the basis of an objective evaluation of her functions. (Cf. Judgement No. 602, Calder (1993) and Judgement No. 597, Colayco (1993)). The Tribunal assumes that the Applicant will co-operate in this exercise.

XI. It is clear to the Tribunal, having reviewed the facts, that the Applicant has suffered material and moral prejudice due to the mishandling of her case. The Tribunal assesses three months net base salary at the Applicant's present grade and step as adequate compensation.

XII. In view of the foregoing, the Tribunal orders that:

(a) The case be remanded as set forth in paragraph X above;

(b) The Respondent pay to the Applicant the amount of three months of her net base salary at the rate in effect on the date of this judgement;

(c) All other pleas are rejected, including the Applicant's pleas relating to the period prior to October 1987, which are time-barred.

XIII. The Applicant's request for costs is rejected, pursuant to the Tribunal's jurisprudence, as stated in Judgement No. 237, Powell (1979).

(Signatures)

Jerome ACKERMAN
First Vice-President, presiding

Luis de POSADAS MONTERO
Second Vice-President

Mayer GABAY
Member

Geneva, 14 July 1994

R. Maria VICIEN MILBURN
Executive Secretary